

UNITED STATES DISTRICT COURT

for the
Eastern District of Virginia

MAY - 8 2017

CLERK OF DISTRICT COURT

In the Matter of the Search of
*(Briefly describe the property to be searched
 or identify the person by name and address)*
 INFORMATION ASSOCIATED WITH FACEBOOK USER
 ID: www.facebook.com/tiquel.harris
 THAT IS STORED AT PREMISES CONTROLLED BY
 FACEBOOK INC.

Case No. 3:17SW65
UNDER SEAL

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location)*:

See Attachment A, incorporated herein by reference

located in the Eastern District of Virginia, there is now concealed *(identify the person or describe the property to be seized)*:

See Attachment B, incorporated by reference herein

The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more)*:

- ☒ evidence of a crime;
☐ contraband, fruits of crime, or other items illegally possessed;
☐ property designed for use, intended for use, or used in committing a crime;
☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section
 18 U.S.C. 922(g)(1)

Offense Description
 Felon in Possession of a Firearm

The application is based on these facts:
 See Attached Affidavit, incorporated herein by reference

☒ Continued on the attached sheet.

☐ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Reviewed by AUSA/SAUSA:

Heather Hart Mansfield

Applicant's signature
 Joshua Valot, Special Agent, ATF

Printed name and title

Sworn to before me and signed in my presence.

Date: May 8, 2017

JSI
 David J. Novak
 United States Magistrate Judge
Judge's signature

City and state: Richmond, Virginia

David J. Novak, United States Magistrate Judge

Printed name and title

IN THE UNITED STATES DISTRICT COURT
FOR EASTERN DISTRICT OF VIRGINIA

Richmond Division

IN THE MATTER OF THE SEARCH OF
INFORMATION ASSOCIATED WITH
FACEBOOK USER ID:
www.facebook.com/tiquel.harris
THAT IS STORED AT PREMISES
CONTROLLED BY FACEBOOK INC.

Case No. 3:17SW65

Filed Under Seal

**AFFIDAVIT IN SUPPORT OF
AN APPLICATION FOR A SEARCH WARRANT**

I, Joshua A. Valot, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application for a search warrant for information associated with a certain Facebook user ID that is stored at premises owned, maintained, controlled, or operated by Facebook Inc. ("Facebook"), a social networking company headquartered in Menlo Park, California. The information to be searched is described in the following paragraphs and in Attachment A. This affidavit is made in support of an application for a search warrant under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A) to require Facebook to disclose to the government records and other information in its possession, pertaining to the subscriber or customer associated with the user ID.

2. Since February 2005, I have been employed as a Special Agent with the Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF"). I am currently assigned to the ATF Richmond III Field Office in Richmond, Virginia. I am a graduate of the Federal Law Enforcement Training Center (FLETC) and the ATF National Academy. I have received training with regard to federal firearms and narcotics violations at the ATF National Academy. I

have participated in Federal and State investigations of individuals involved in the illegal possession and trafficking of firearms along with homicides, shootings, gangs and robbery investigations. These investigations have led to numerous arrests and convictions for violations of federal and state firearms, narcotics and related laws.

3. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other law enforcement personnel and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

4. Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that violations of **Possession of a Firearm by a Previously Convicted Felon**, 18 U.S.C. § 922(g) (1) by Tynell JONES and Darrell WITCHER. There is also probable cause to search the information described in Attachment A for evidence of these crimes, as described in Attachment B.

PROBABLE CAUSE

5. On November 15, 2016 Richmond Police Department Officers Gilbert, Gaines and Williams were on patrol in Mosby Court and riding together in the same police vehicle. The officers attempted to pull over a silver 4 door Hyundai hatchback car for a defective right rear passenger tail light. The only occupants in the vehicle were Darrell WITCHER, driving the vehicle, and Tynell JONES in the front passenger seat. The Hyundai fled from the police officers and a vehicle pursuit ensued. During this pursuit, Officer Gilbert, who was the driver of the police vehicle, was wearing a body worn camera (BWC) that was attached to his glasses. On the BWC video, Officer Gaines, who is sitting in the front passenger, seat can be heard stating that they threw something from the vehicle and an object can be seen bouncing on the road. After

making several turns through the Mosby Court area, WITCHER bailed from the driver seat while the vehicle was still in motion. The Hyundai vehicle came to a stop as it jumped the sidewalk stopping its momentum. Officers Gaines and Williams pursued WITCHER on foot and eventually took him into custody. JONES remained in the vehicle and was taken into custody by Officer Gilbert.

6. Officers then backtracked the pursuit route to where they observed an item being thrown from the vehicle. A black Smith and Wesson, M&P .40 caliber handgun was located in a gutter and a Glock .40 caliber with an extended magazine was located in the street. Both firearms had visible damage to their frames consistent with striking/sliding on pavement. Additionally, the exterior body of the vehicle appeared to have several holes which resembled bullet holes.

7. Both WITCHER and JONES admitted to being convicted felons which has been verified through NCIC and were charged with possession of a firearm by a convicted felon.

8. As recently as May 4, 2017, your affiant has viewed videos on the Facebook page described in Attachment A, which appear to have been recorded in October 2016 depicting WITCHER, JONES and various other individuals, some of whom are also believed to be felons, brandishing and pointing what appear to be firearms while talking to the camera. Two of the firearms on these videos are consistent with the two firearms recovered during the above-mentioned vehicle pursuit/traffic stop where items later determined to be firearms were thrown from the vehicle.

9. The account holder of Attachment A is believed to belong to Tiquel HARRIS who is Facebook friends with JONES and WITCHER and also is seen in the videos posing with

and talking about firearms. JONES uses the Facebook user ID “Ruger Nell.” WITCHER uses the Facebook user ID “Darrell Witcher.”

10. From reviewing these videos your affiant believes these videos are recorded as a means of communication with Facebook Live viewers. Statements being made appear to be taunting and threatening the viewers while brandishing firearms for the camera.

11. Facebook owns and operates a free-access social networking website of the same name that can be accessed at <http://www.facebook.com>. Facebook allows its users to establish accounts with Facebook, and users can then use their accounts to share written news, photographs, videos, and other information with other Facebook users, and sometimes with the general public.

12. Facebook asks users to provide basic contact and personal identifying information to Facebook, either during the registration process or thereafter. This information may include the user’s full name, birth date, gender, contact e-mail addresses, Facebook passwords, Facebook security questions and answers (for password retrieval), physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers. Facebook also assigns a user identification number to each account.

13. Facebook users may join one or more groups or networks to connect and interact with other users who are members of the same group or network. Facebook assigns a group identification number to each group. A Facebook user can also connect directly with individual Facebook users by sending each user a “Friend Request.” If the recipient of a “Friend Request” accepts the request, then the two users will become “Friends” for purposes of Facebook and can exchange communications or view information about each other. Each Facebook user’s account

includes a list of that user's "Friends" and a "News Feed," which highlights information about the user's "Friends," such as profile changes, upcoming events, and birthdays.

14. Facebook users can select different levels of privacy for the communications and information associated with their Facebook accounts. By adjusting these privacy settings, a Facebook user can make information available only to himself or herself, to particular Facebook users, or to anyone with access to the Internet, including people who are not Facebook users. A Facebook user can also create "lists" of Facebook friends to facilitate the application of these privacy settings. Facebook accounts also include other account settings that users can adjust to control, for example, the types of notifications they receive from Facebook.

15. Facebook users can create profiles that include photographs, lists of personal interests, and other information. Facebook users can also post "status" updates about their whereabouts and actions, as well as links to videos, photographs, articles, and other items available elsewhere on the Internet. Facebook users can also post information about upcoming "events," such as social occasions, by listing the event's time, location, host, and guest list. In addition, Facebook users can "check in" to particular locations or add their geographic locations to their Facebook posts, thereby revealing their geographic locations at particular dates and times. A particular user's profile page also includes a "Wall," which is a space where the user and his or her "Friends" can post messages, attachments, and links that will typically be visible to anyone who can view the user's profile.

16. Facebook allows users to upload photos and videos, which may include any metadata such as location that the user transmitted when s/he uploaded the photo or video. It also provides users the ability to "tag" (i.e., label) other Facebook users in a photo or video. When a user is tagged in a photo or video, he or she receives a notification of the tag and a link

to see the photo or video. For Facebook's purposes, the photos and videos associated with a user's account will include all photos and videos uploaded by that user that have not been deleted, as well as all photos and videos uploaded by any user that have that user tagged in them.

17. Facebook users can exchange private messages on Facebook with other users. These messages, which are similar to e-mail messages, are sent to the recipient's "Inbox" on Facebook, which also stores copies of messages sent by the recipient, as well as other information. Facebook users can also post comments on the Facebook profiles of other users or on their own profiles; such comments are typically associated with a specific posting or item on the profile. In addition, Facebook has a Chat feature that allows users to send and receive instant messages through Facebook. These chat communications are stored in the chat history for the account. Facebook also has a Video Calling feature, and although Facebook does not record the calls themselves, it does keep records of the date of each call.

18. If a Facebook user does not want to interact with another user on Facebook, the first user can "block" the second user from seeing his or her account.

19. Facebook has a "like" feature that allows users to give positive feedback or connect to particular pages. Facebook users can "like" Facebook posts or updates, as well as webpages or content on third-party (*i.e.*, non-Facebook) websites. Facebook users can also become "fans" of particular Facebook pages.

20. Facebook has a search function that enables its users to search Facebook for keywords, usernames, or pages, among other things.

21. Each Facebook account has an activity log, which is a list of the user's posts and other Facebook activities from the inception of the account to the present. The activity log includes stories and photos that the user has been tagged in, as well as connections made through

the account, such as “liking” a Facebook page or adding someone as a friend. The activity log is visible to the user but cannot be viewed by people who visit the user’s Facebook page.

22. Facebook Notes is a blogging feature available to Facebook users, and it enables users to write and post notes or personal web logs (“blogs”), or to import their blogs from other services, such as Xanga, LiveJournal, and Blogger.

23. The Facebook Gifts feature allows users to send virtual “gifts” to their friends that appear as icons on the recipient’s profile page. Gifts cost money to purchase, and a personalized message can be attached to each gift. Facebook users can also send each other “pokes,” which are free and simply result in a notification to the recipient that he or she has been “poked” by the sender.

24. Facebook also has a Marketplace feature, which allows users to post free classified ads. Users can post items for sale, housing, jobs, and other items on the Marketplace.

25. In addition to the applications described above, Facebook also provides its users with access to thousands of other applications (“apps”) on the Facebook platform. When a Facebook user accesses or uses one of these applications, an update about that the user’s access or use of that application may appear on the user’s profile page.

26. Facebook uses the term “Neoprint” to describe an expanded view of a given user profile. The “Neoprint” for a given user can include the following information from the user’s profile: profile contact information; News Feed information; status updates; links to videos, photographs, articles, and other items; Notes; Wall postings; friend lists, including the friends’ Facebook user identification numbers; groups and networks of which the user is a member, including the groups’ Facebook group identification numbers; future and past event postings;

rejected “Friend” requests; comments; gifts; pokes; tags; and information about the user’s access and use of Facebook applications.

27. Facebook also retains Internet Protocol (“IP”) logs for a given user ID or IP address. These logs may contain information about the actions taken by the user ID or IP address on Facebook, including information about the type of action, the date and time of the action, and the user ID and IP address associated with the action. For example, if a user views a Facebook profile, that user’s IP log would reflect the fact that the user viewed the profile, and would show when and from what IP address the user did so.

28. Social networking providers like Facebook typically retain additional information about their users’ accounts, such as information about the length of service (including start date), the types of service utilized, and the means and source of any payments associated with the service (including any credit card or bank account number). In some cases, Facebook users may communicate directly with Facebook about issues relating to their accounts, such as technical problems, billing inquiries, or complaints from other users. Social networking providers like Facebook typically retain records about such communications, including records of contacts between the user and the provider’s support services, as well as records of any actions taken by the provider or user as a result of the communications.

29. As explained herein, information stored in connection with a Facebook account may provide crucial evidence of the “who, what, why, when, where, and how” of the criminal conduct under investigation, thus enabling the United States to establish and prove each element or alternatively, to exclude the innocent from further suspicion. In my training and experience, a Facebook user’s “Neoprint,” IP log, stored electronic communications, and other data retained by Facebook, can indicate who has used or controlled the Facebook account. This “user

attribution” evidence is analogous to the search for “indicia of occupancy” while executing a search warrant at a residence. For example, profile contact information, private messaging logs, status updates, and tagged photos (and the data associated with the foregoing, such as date and time) may be evidence of who used or controlled the Facebook account at a relevant time. Further, Facebook account activity can show how and when the account was accessed or used. For example, as described herein, Facebook logs the Internet Protocol (IP) addresses from which users access their accounts along with the time and date. By determining the physical location associated with the logged IP addresses, investigators can understand the chronological and geographic context of the account access and use relating to the crime under investigation. Such information allows investigators to understand the geographic and chronological context of Facebook access, use, and events relating to the crime under investigation. Additionally, Facebook builds geo-location into some of its services. Geo-location allows, for example, users to “tag” their location in posts and Facebook “friends” to locate each other. This geographic and timeline information may tend to either inculcate or exculpate the Facebook account owner. Last, Facebook account activity may provide relevant insight into the Facebook account owner’s state of mind as it relates to the offense under investigation. For example, information on the Facebook account may indicate the owner’s motive and intent to commit a crime (e.g., information indicating a plan to commit a crime), or consciousness of guilt (e.g., deleting account information in an effort to conceal evidence from law enforcement).

30. Therefore, the computers of Facebook are likely to contain all the material described above, including stored electronic communications and information concerning subscribers and their use of Facebook, such as account access information, transaction information, and other account information.

INFORMATION TO BE SEARCHED AND THINGS TO BE SEIZED

31. I anticipate executing this warrant under the Electronic Communications Privacy Act, in particular 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A), by using the warrant to require Facebook to disclose to the government copies of the records and other information (including the content of communications) particularly described in Section I of Attachment B. Upon receipt of the information described in Section I of Attachment B, government-authorized persons will review that information to locate the items described in Section II of Attachment B.

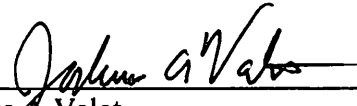
CONCLUSION

32. Based on the forgoing, I request that the Court issue the proposed search warrant.

33. This Court has jurisdiction to issue the requested warrant because it is “a court of competent jurisdiction” as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a), (b)(1)(A) & (c)(1)(A). Specifically, the Court is “a district court of the United States . . . that – has jurisdiction over the offense being investigated.” 18 U.S.C. § 2711(3)(A)(i).

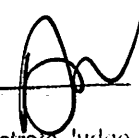
34. Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the service or execution of this warrant.

Respectfully submitted,



Joshua A. Valot
Special Agent
Bureau of Alcohol, Tobacco, Firearms and
Explosives (ATF)

Subscribed and sworn to before me on May 8, 2017.



/s/
David J. Novak
United States Magistrate Judge

ATTACHMENT A

Property to Be Searched

This warrant applies to information associated with the Facebook user ID:
www.facebook.com/tiquel.harris that is stored at premises owned, maintained, controlled, or
operated by Facebook Inc., a company headquartered in Menlo Park, California.

ATTACHMENT B

Particular Things to be Seized

I. Information to be disclosed by Facebook

To the extent that the information described in Attachment A is within the possession, custody, or control of Facebook Inc. ("Facebook"), including any messages, records, files, logs, or information that have been deleted but are still available to Facebook, or have been preserved pursuant to a request made under 18 U.S.C. § 2703(f), Facebook is required to disclose the following information to the government for each user ID listed in Attachment A:

- (a) All contact and personal identifying information, including full name, user identification number, birth date, gender, contact e-mail addresses, Facebook passwords, Facebook security questions and answers, physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers.
- (b) All activity logs for the account and all other documents showing the user's posts and other Facebook activities with Facebook users "DARRELL WITCHER" and "RUGER NELL";
- (c) All photos and videos uploaded by that user ID and all photos and videos uploaded by any user that have that user tagged in them;
- (d) All other records of communications and messages made or received by the user to Facebook users "RUGER NELL" and "DARRELL WITCHER", including all private messages, chat history, video calling history, and pending "Friend" requests with those Facebook users;
- (e) All past and present lists of friends created by the account;

II. Information to be seized by the government

All information described above in Section I that constitutes fruits, evidence and instrumentalities of violations of **Possession of a Firearm by a Previously Convicted Felon**: 18 U.S.C. § 922(g) (1) provides that it is a crime to possess a firearm as a convicted felon have been committed by Tynell JONES and Darrell WITCHER:

- (a) Possession of a firearm by Tynell JONES and Darrell WITCHER after having been previously convicted of a felony.
- (b) The identity of the person(s) who communicated with the user ID about the photos and videos posted depicting evidence of violations of 18 U.S.C. § 922(g)(1), including records that help reveal their whereabouts.